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**DEC 01 2008**

**OFFICE OF PETITIONS**

In re Application of :  
Combs :  
Application No. 10/603,443 : DECISION  
Filed: 25 June, 2003 :  
Attorney Docket No. RAP-1 :

This is a decision on the petition filed on 3 November, 2008, considered as a petition under 37 C.F.R. §1.137(b) to revive the application as having been abandoned due to unintentional delay.

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

As to Allegations of  
Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

BACKGROUND

The record reflects as follows:

Petitioner failed to reply to the final Office action (copy enclosed) mailed on 25 September, 2007, with reply due absent extension of time on or before 26 December, 2007.

The application went abandoned by operation of law after midnight 25 December, 2007.

The Office mailed the Notice of Abandonment on 3 April, 2008.

On 14 May, 2008, Petitioner filed a petition averring, *inter alia*, non-receipt of the Office action in question and supporting that with a statement of Petitioner and of Petitioner's paralegal, along with some 40 pages of documents from Petitioner's docketing system. It is noted, however, that the absence of detail as to application numbers and transaction(s) occurring/due throughout and as to the docket number and title in many of the items within those 40 pages appears to remove the possibility for the Office to interpret and/or evaluate the documents submitted. While Petitioner may redact private financial and/or proprietary information, the documents submitted must at least provide such transparency as might allow the Office to discern what is presented—thus, because Petitioner had not satisfied the requirements discussed at MPEP §711.03(c)(I), the petition was dismissed on 2 September, 2008.

On Monday, 3 November, 2008, Petitioner filed the instant petition with fee pursuant to 37 C.F.R. §1.137(b) and averring unintentional delay, a reply in the form of an amendment and made the statement of unintentional delay.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.<sup>1</sup>

### STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).<sup>2</sup>

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.<sup>3</sup>))

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<sup>1</sup> See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

<sup>2</sup> 35 U.S.C. §133 provides:

**35 U.S.C. §133 Time for prosecuting application.**

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

As to Allegations of  
Unintentional Delay

The requirements under 37 C.F.R. §1.137(b) have been satisfied.


CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to Technology Center/AU (TC/AU) 2621 for further processing in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to that change in status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2<sup>4</sup>) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

  
/John J. Gillon, Jr./  
John J. Gillon, Jr.  
Senior Attorney  
Office of Petitions

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<sup>3</sup> Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

<sup>4</sup> The regulations at 37 C.F.R. §1.2 provide:

**§1.2 Business to be transacted in writing.**

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.